



WILLIAM T FUJIOKA
Chief Executive Officer

County of Los Angeles CHIEF EXECUTIVE OFFICE

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September 18, 2007

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**DEPARTMENT OF PUBLIC HEALTH: APPROVAL OF AN AGREEMENT WITH
GOOGLE, INCORPORATED TO PROVIDE A CUSTOM SEARCH ENGINE
TO THE DEPARTMENT OF PUBLIC HEALTH
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)
CIO RECOMMENDATION: APPROVE (X)**

IT IS RECOMMENDED THAT YOUR BOARD:

Approve and authorize the Director of the Department of Public Health (DPH), or his designee, to enter into Google, Incorporated's (Google) Standard Terms of Service, substantially similar to Exhibit I, which will govern the use of Google's Custom Search Engine (Google Co-op) on DPH's website, effective upon date of Board approval, and shall continue thereafter until terminated by either party at any time, at no net County cost.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the recommended action allows DPH to utilize a world class search engine to provide accessible research reports, databases, fact sheets, guides and current evidence-based public health information to assist DPH's programs, healthcare professionals, and all levels of staff to conduct research, promote health, enhance prevention, develop and advocate sound public health policies, and implement strategies to improve quality of service for DPH's programs.

Board of Supervisors
GLORIA MOLINA
First District

YVONNE B. BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

FISCAL IMPACT/FINANCING

There will be no cost or financial impact to DPH during the term of the Standard Terms of Service with Google.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On December 5, 2006, your Board approved a motion authorizing the Director of DPH to enter into an agreement with Google for a customized search engine on DPH's website at no charge, with no advertising and with no link to the regular Google.com search engine but, with acknowledgement of the Google Custom Search on the search screen and of the Google Co-op on the search results page, with a link to the Google Co-op site. Further, the Board instructed the Chief Information Officer to monitor DPH's Co-op program with Google, and report back to the Board after six months of successful operation with findings and recommendations on the advisability of expanding the Google Co-op program to include the County portal and other County departments.

Since December 2006, DPH and County Counsel have been attempting to negotiate an agreement with Google that is consistent with the authority delegated by your Board on December 5, 2006. However, Google insists upon using their Standard Terms of Service, which DPH understands Google requires for all entities using Google Co-op.

The Standard Terms of Service departs from the stated parameters of your Board's December 5, 2006, motion in one respect. DPH is required to display a link on the search results page to the Google Co-op information page, which is within the parameters of the December 5, 2006, motion; however, on that page, there are links to Google advertised products and to the Google.com search engine itself. To mitigate this concern, DPH will add a disclaimer message to appear on the search results page, which will notify DPH's users that navigating to outside links may present the user with advertising that is not supported or endorsed by the County.

Additionally, County Counsel has identified a number of instances in which the Standard Terms of Service departs from the County's standard terms and conditions. Three of these departures worth noting are as follows:

1. Warranties and indemnification: The Standard Terms of Service includes broad warranties required to be made on the part of the County. The agreement requires that the County make warranties regarding the behavior of third parties over which the County may have no control. The County is required to indemnify, defend, and hold Google harmless based on a claim on a breach of the warranties. In addition,

the Standard Terms of Service limits Google's liability to the County for any action up to \$1,000.

2. Use of the County identity: Google is permitted to use the County's name, logo, and other distinctive features to advertise that DPH is using Google Co-op.
3. Use of information: Google is allowed to use information it obtains from DPH's use of Google Co-Op in accordance with Google's privacy and security policy. This may include information regarding searches conducted by users of DPH's website.

Regarding the first departure from the County's standard terms and conditions, DPH has reviewed the proposed Standard Terms of Service, including the indemnification and limitation of liability provisions with the Chief Executive Office's (CEO) Risk Management Branch. CEO Risk Management Branch concurs with DPH's assessment that access to Google's world class search technology should pose minimal financial risk to the County. Furthermore, in the event that any financial risk materializes, County may immediately terminate the Standard Terms of Service. Having the ability to terminate will not eliminate the risk exposure to County, but it may mitigate it.

Regarding the second departure, although the Standard Terms of Service grants a broad right to the use of County's name, logo, and other distinctive brand features, DPH understands that Google intends to use these items to identify County as a user of Google Co-op. Further, should Google use these items in a manner which is unacceptable to the County, provided County learns of such use, County may immediately terminate the Standard Terms of Service. Although neither of these eliminates the risk that Google will misuse County's name, logo, or other distinctive brand features, DPH believes that together with the benefit of using Google Co-op free of charge, they outweigh the risk sufficiently to warrant use of Google Co-op.

Regarding the third departure, DPH will add a link on the search results page to Google's privacy and security policy which clarifies the type of information collected on all users by Google Co-op and puts the users on notice of such collection.

Attachment A provides additional information. Attachment B is the CIO analysis.

Exhibit I has been reviewed and approved as to form by County Counsel.

Honorable Board of Supervisors
September 18, 2007
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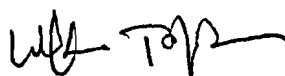
IMPACT ON CURRENT SERVICES (OR PROJECTS)

The recommended Board action will improve access to research reports, databases, fact sheets, guides and public health information to promote health, enhance prevention, develop and advocate sound public health policies, and implement strategies to improve quality of service for DPH's programs.

CONCLUSION

The Department of Public Health requires four signed copies of the Board's action. It is requested that the Executive Officer, Board of Supervisors, notify the Department of Public Health, Contracts and Grants Division, at (213) 240-8179 when this document is available.

Respectfully submitted,



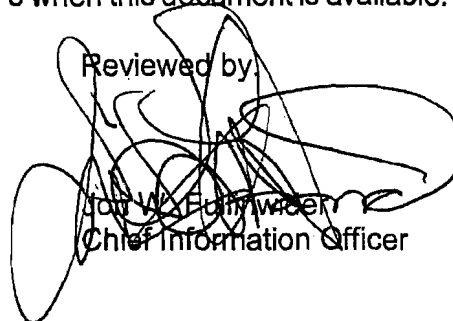
WILLIAM T FUJIOKA
Chief Executive Officer

WTF:SRH:SAS
DRJ:RM:bjs

Attachments (3)

c: County Counsel
Director and Health Officer, Department of Public Health

Reviewed by



Jon W. Fairweather
Chief Information Officer

SUMMARY OF AGREEMENT

1. TYPE OF SERVICE:

Enter into Google's Standard Terms of Service Agreement to govern the use of Google's custom search engine (Google Co-op) on Public Health's website, at no net County cost.

2. AGENCY ADDRESS AND CONTACT PERSON:

Google Inc.
Attention: Legal Department
1600 Amphitheatre Parkway
Mountain View, CA 94043

3. TERM OF AGREEMENT:

Effective on the date of Board approval.

4. FINANCIAL INFORMATION:

DPH's entering into Google's Standard Terms of Service Agreement and the use of the search engine will result in no cost to DPH.

5. GEOGRAPHIC AREA TO BE SERVED:

Countywide.

6. ACCOUNTABLE FOR MONITORING AND EVALUATION:

Jim Green
Department of Public Health
Chief, Information Officer

7. APPROVALS:

Public Health Programs:	John F. Schunhoff, Ph.D., Chief Deputy Director
Contract Administration:	Gary T. Izumi, Division Chief
County Counsel (approval as to form)	Robert E. Ragland, Senior Deputy County Counsel

CIO ANALYSIS

**DEPARTMENT OF PUBLIC HEALTH'S (DPH) REQUEST FOR APPROVAL TO
EXECUTE A NO-COST AGREEMENT WITH GOOGLE INC. (GOOGLE) FOR A CUSTOM
SEARCH ENGINE PRODUCT (GOOGLE CO-OP)**

CIO RECOMMENDATION: ☒ APPROVE ☐ APPROVE WITH MODIFICATION
☐ DISAPPROVE

Contract Type:

☒ New Contract ☐ Contract Amendment ☐ Contract Extension
☐ Sole Source Contract ☐ Hardware Acquisition ☐ Other

New/Revised Contract Term: Base Term: N/A Yrs # of Option Yrs _____

Contract Components:

☒ Software ☐ Hardware ☐ Telecommunications
☐ Professional Services

Project Executive Sponsor: Jonathan E. Fielding, M.D., M.P.H., M.B.A., Director of
Public Health and Health Officer

Budget Information :

Y-T-D Contract Expenditures	\$ 0
Requested Contract Amount	\$ 0
Aggregate Contract Amount	\$ 0

Project Background:

Yes	No	Question
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Is this project legislatively mandated?
<input type="checkbox"/>	<input type="checkbox"/>	Is this project subvented? If yes, what percentage is offset? Not Applicable. Use of this product is cost-free.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Is this project/application applicable to (shared use or interfaced) other departments? If yes, name the other department(s) involved?

Strategic Alignment:

Yes	No	Question
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is this project in alignment with the County of Los Angeles Strategic Plan?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is this project consistent with the currently approved Department Business Automation Plan?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Does the project's technology solution comply with County of Los Angeles IT Directions Document?
<input type="checkbox"/>	<input type="checkbox"/>	Does the project technology solution comply with preferred County of Los Angeles IT Standards? No specific standard has yet been identified or adopted for the use of a specific global search engine product on County Department

		websites so, technically, this product does not run contrary to the County's IT Standards. That said, however, there are a variety of exceptions to the County's standard contract terms that would have to be agreed to in order for DPH to use this product.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	This contract and/or project and its milestone deliverables must be entered into the Information Technology Tracking System (ITTS).

Project/Contract Description:

Approval of the recommended action allows the Department of Public Health (DPH) to utilize the Google Co-op Custom Search Engine to provide visitors to DPH's Internet website to search for the most current and relevant data available from specifically designated and highly trusted websites relative to the subject or subjects of most interest to them. The Google Co-op product is free of cost to the County.

Background:

On December 5, 2006, the Board approved a motion brought by Supervisor Yaroslavsky that authorized the Director of DPH to enter into an agreement with Google for a customized search engine that would reside on DPH's web site at no charge, with no advertising, and with no link to the regular Google.com search engine. Use of the customized search engine could include an acknowledgement of the use of the Google Custom Search on the DPH search screen and on the search results page. Further, the Board instructed the Chief Information Officer (CIO) to monitor the DPH Co-op program with Google and report back to the Board after six months of successful operation with findings and recommendations on the advisability of expanding the Google Co-op program to include the County portal and other County departments.

Since December 5, 2006, DPH, with the assistance of County Counsel, has been attempting to negotiate such an agreement with Google, consistent with the authority delegated by the Board. However, negotiations with Google had stalled because of Google's insistence upon the County agreeing to the provisions contained in their Standard Terms of Service instead of the County's standard contract Terms and Conditions, as well as the parameters set out in Supervisor Yaroslavsky's motion. Because of these issues, DPH is now returning to the Board to obtain authorization to enter into an agreement with Google that deviates to some extent from the County's standard contract terms and conditions and the parameters articulated in the Board Action of December 5, 2006.

Google's Standard Terms of Service depart from those provisions and parameters in the following ways:

- Use of the Google Co-op Custom Search engine would require a link to Google's Custom Search Engine information page, and this page may contain links to Google advertisers or to the regular Google.com search engine;
- Google's Standard Terms of Service include broad warranties the County would be required to make regarding the behavior of third parties over which the County may have no control;

- Google would be allowed to use information it obtains from DPH's use of Google Co-Op in accordance with Google's privacy and security policy, including information regarding searches conducted by users of DPH's website;
- The County would be required to indemnify, defend, and hold Google harmless based on any claim on a breach of those warranties, and in addition, limits Google's liability to the County for any action to one thousand dollars (\$1,000); and
- Google would be permitted to use the County's name, logo, and other distinctive features in presentations, marketing materials, and customer lists (which includes, without limitation, customer lists posted on Google's websites and screen shots of the Service).

The Chief Executive Office/Risk Management has reviewed these deviations from standard County contract provisions and the requirements detailed in the December 5, 2006 Board Action and has determined that because of the very narrow circumstances under which these deviations might come into play, minimal risk to the County would be created by agreeing to Google's Standard Terms of Service.

To further mitigate risks, DPH will be selecting an option available to government agencies using the Google Custom Engine product that will preclude advertisements from appearing on the search results page that will be displayed to the end user. In addition, DPH will be implementing a disclaimer message that will appear whenever a visitor to their website uses the Google Search feature. That disclaimer message will notify the user that navigating to the any link that appears on the search results page may present them with advertising that is not supported or endorsed by the County. On that basis, CEO/Risk Management concurs with the assessment that constituent use of the Google Co-op product should pose minimal financial risk to the County.

Project Justification/Benefits:

As was stated in the initial Board Motion on December 5, 2006, use of the Google Co-op Custom Search Engine would "allow documents and data to be tagged with special codes for easier search engine retrieval and more targeted results for users, searching only documents generated by the Department and those contained on certain designated external sites (such as the Federal Centers for Disease Control [CDC] website)." This would provide the visitors to the DPH public website with an extremely useful search tool, specifically targeting data and information of significant relevance to the issue they are researching that can be found both within the DPH website and on external websites specifically identified by DPH as trusted and valuable resources (e.g., CDC, National Institute of Health, leading universities and other reputable providers of health information).

Project Metrics:

Once implemented, DPH and the CIO will closely monitor and review the results being generated through searches being made on the Google Co-op Custom Search Engine. Per the Board Action taken on December 5, 2006, the CIO and DPH will report back to the Board after six months of successful operation of the Google Co-op Search Engine with findings and further recommendations.

Impact on Service Delivery or Department Operations, if Proposal is not approved:

If authorization to enter into this agreement with Google is not approved, searches on the DPH website will be limited strictly to searches of information and documents contained within the DPH website domain, until such time as the County adopts and DPH implements a standard global search engine product that will permit broader and more comprehensive external website searches.

Alternatives Considered:

No other alternatives have been considered as there does not appear to be any similar cost-free custom search engine product available. Other government agencies are using this tool and are very pleased with what it does for them. Since use of this tool is at no cost to the County, no competitive solicitation is required.

Project Risks:

Because of the conditions required by Google for DPH to use their Google Co-op Custom Search Engine product, the County subjects itself to certain risks it does not typically allow, as mentioned above. However, the relative risks that exist under those conditions have been closely reviewed and considered and do not appear to be significant.

Risk Mitigation Measures:

DPH is attempting to mitigate at least some of the risks described above first by specifically identifying and limiting searches to internal (County) website resources and to specific known, trusted and reliable external websites that do not engage in commercial advertising.

On the issues of warranties, indemnification and limitations of liability, CEO/Risk Management has determined that although Google's contract requirements do not put the County in the most ideal of situations, the likelihood that something may occur that would trigger any of these provisions is so remote, the risk to the County created by the existence of these provisions is very minimal.

As to the issue of Google potentially using information it obtains from DPH's use of Google Co-Op, including information regarding searches conducted by users of DPH's website, DPH will add a link on the search results page to the Google's privacy and security policy which clarifies the type of information which is collected on all users by Google Co-op and puts the users on notice of such collection.

Since this is a no-cost product that does not require a specific time commitment on the part of DPH, the agreement can be terminated by DPH at any time should DPH find that the Google Co-op product, or the terms and conditions required by Google governing its use do not suit DPH's needs.

Financial Analysis:

Use of the Google Co-op Custom Search Engine product by DPH is totally cost-free to the County.

CIO Concerns:

None

CIO Recommendations:

The Chief Information Office recommends approval of DPH's request to move forward with the Google Co-op Custom Search Engine product.

CIO APPROVAL

Date Received: August 28, 2007

Prepared by: Earl Bradley

Date: August 28, 2007

Approved: 

Date: 9-5-07

Custom Search Engine



Terms of service

Welcome to Google Custom Search Engine! By using the Custom Search Engine (the "Service"), you ("You") accept and agree to be bound by the following terms and conditions (the "Terms of Use") with Google Inc., and its subsidiaries or affiliated companies ("Google").

1. Service.

1.1 Description of Service. Custom Search Engine assists You in providing customized Web search services on the Site (defined below) by utilizing the Google search engine. You must have a Google Account to use the Service. For purposes of the Terms of Use, "Site" shall mean the Web site or sites on which You place JavaScript or similar programming ("Code") which renders the Google search box (or other means used by users of the Site ("End Users") to enter a search query ("Query")) on the Site ("Search Box"). All Queries sent from the Site to Google shall comply with the technical specifications that Google may provide from time to time, and must originate from the Site. Google will receive Queries from You at Google's network interface, process the Queries using Google's search engine and display search results ("Results") on a Results Page. For purposes of the Terms of Use, "Results Page" is defined as the Google hosted or controlled Web page that contains and displays to an End User the Results from the Service.

The Results displayed by the Service will be determined by some or all of the following: (a) the web sites over which the search is to be restricted or filtered, as provided by you in the Service; (b) labels created by You, or a community of which You are a member, through the Google Co-op service; or (c) other Service features that Google may make available from time to time as described in the Service documentation, which can be found at <http://www.google.com/coop/docs/cse/> or other URL that Google may make available from time to time at its sole discretion. You understand and agree that your use of labels is also subject to the Google Co-op topics Terms of Service.

Unless explicitly stated otherwise, the Service may be modified or terminated at any time by Google for any reason, and without notice, without liability to You, any End User or any third party. Any new features that augment or enhance the current Service shall be subject to the Terms of Use.

1.2 Modifications. Google may modify the Terms of Use at any time with or without notice, and you can review the most current version of the Terms of Use online at any time at Terms of Use. If a modification is unacceptable to You, You may cancel the Service on the Site and terminate the Terms of Use by removing the Code and the Search Box from Your Site. If You continue to use the Code and/or the Search Box on any Site, You will be deemed to have accepted the modifications.

1.3 Your Obligations. You shall receive a Query from the End User and shall forward that Query to Google. You may not in any way frame or cache the Results produced by Google, except as otherwise agreed to between You and Google. Google will not be responsible for receiving Queries from End Users or for transmission of data between You and Google's network interface. You shall be responsible for providing all hardware and software required to perform Your obligations under the Terms of Use, including but not limited to the following: (a) implementing and maintaining the Site, (b) implementing and maintaining the interface between the Site and the Service, and (c) receiving a Query from an End User and transmitting the Query to Google.

1.4 Appropriate Conduct. You shall not, and shall not allow any third party to: (a) edit, modify, truncate, filter or change the order of the information contained in any Results (either individually or collectively), including, without limitation, by way of commingling Results with non-Google provided search results or advertising; (b) frame any Results or Results Page except as provided for in the Service documentation; (c) display any Results in pop-up, pop-under, exit windows, expanding buttons, or animation; (d) display any Results to any third parties other than End Users; (e) minimize, remove or otherwise inhibit the full and complete display of any Results Page (including any

Results); (f) directly or indirectly access, launch and/or activate the Service through or from, or otherwise incorporate the Service in, any Web site or other means other than the Site, and then only to the extent expressly permitted herein; (g) transfer, sell, lease, syndicate, sub-syndicate, lend, or use for co-branding, timesharing, service bureau or other unauthorized purposes any Service or access thereto (including, but not limited to Results, or any part, copy or derivative thereof); (h) enter into any arrangement or agreement under which any third party pays You fees, You pay any third party fees, or either shares in any revenue payments and/or royalties for any Results; (i) directly or indirectly generate queries, or impressions of or clicks on Results, through any automated, deceptive, fraudulent or other invalid means (including, but not limited to, click spam, robots, macro programs, and Internet agents); (j) modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from any Service or any other Google technology, content, data, routines, algorithms, methods, ideas design, user interface techniques, software, materials, and documentation; (k) remove, deface, obscure, or alter Google's copyright notice, trademarks or other proprietary rights notices affixed to or provided as a part of any Service or any other Google technology, software, materials and documentation; (l) "crawl", "spider", index or in any non-transitory manner store or cache information obtained from the Service (including, but not limited to, Results, or any part, copy or derivative thereof); (m) create or attempt to create a substitute or similar service or product through use of or access to any of the Service or proprietary information related thereto; and/or (n) engage in any action or practice that reflects poorly on Google or otherwise disparages or devalues Google's reputation or goodwill. Further, the Site shall not contain any pornographic, hate-related or violent content or contain any other material, products or services that violate or encourage conduct that would violate any criminal laws, any other applicable laws, Service policies, or any third party rights.

1.5 Exclusivity. You agree that, during the Term, Google will be the exclusive provider of Internet search services on the Site. You further understand that Google will provide the Service on a nonexclusive basis, and that Google will continue to customize and provide its services to other parties for use in connection with a variety of applications, including search engine applications.

1 Advertising. The Results Page provided by Google through the Service may contain advertising. The Service is compatible with, and You may apply for, the Google AdSense program (www.google.com/adsense), subject to the AdSense Terms and Conditions. You understand and agree that Google shall have the exclusive right to provide advertisements in connection with the Results provided by the Service.

2 Proprietary Rights.

2.1 Google Rights. For purposes of the Terms of Use, "Intellectual Property Rights" shall mean any and all rights existing from time to time under patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide. As between You and Google, You acknowledge that Google owns all right, title and interest, including without limitation all Intellectual Property Rights, in and to the Service (including Google's search engine technology and Google Brand Features, and excluding items licensed by Google from third parties), and that You shall not acquire any right, title, or interest in or to the Service (including Google's search engine technology and Google Brand Features), except as expressly set forth in the Terms of Use. AdWords, AdSense, GOOGLE, the "Google" logo, and other marks that incorporate the word GOOGLE and PAGERANK, are trademarks of Google.

2.2 Brand Feature License. For purposes of the Terms of Use, "Brand Features" shall be defined as the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time. Google hereby grants to You a nontransferable, nonsublicenseable, nonexclusive license during the Term to display Google's Brand Features for the purpose of promoting or advertising that You use the Service and for the purpose of fulfilling Your obligations under Section

2.3 below. You hereby grant to Google a nontransferable, nonexclusive license during the Term to use Your Brand Features to advertise that You are using the Service. Any use of the Google Brand Features is subject to the Google Brand Features Guidelines, currently available at <http://www.google.com/coop/docs/cse/branding.html>. Google may modify the Google Brand Features or the Google Brand Features Guidelines from time to time and Google will post such notice on the Google Web site. You agree that Your respective products and/or services that are associated with Google's Brand Features shall meet the same general level of quality as is provided by Google in connection with Google's own Brand Features. Except as set forth in this Section 2.2, nothing in the Terms of Use shall grant or shall be deemed to grant to one party any right, title or interest in or to the other party's Brand Features. All use by You of Google's Brand Features (including any goodwill associated therewith) shall inure to the benefit of Google. At no time during or after the Term shall You challenge or assist others to challenge the Brand Features of Google (except to the extent such restriction is prohibited by law) or the registration thereof by Google, nor shall You attempt to register any Brand Features (including domain names) that are confusingly similar in any way (including but not limited to, sound, appearance and spelling) to those of Google.

2.3 Attribution. The Search Box shall conspicuously display a graphic (available at <http://www.google.com/coop/images/searchbox.gif>) that indicates that the Service is provided by Google. The graphic shall link to the Google site located at <http://www.google.com> or such other address as Google may designate from time to time during the Term.

2.4 Digital Millennium Copyright Act. It is Google's policy to respond to notices of alleged infringement that comply with the Digital Millennium Copyright Act. For directions and more information, please see <http://www.google.com/dmca.html>.

1 Use of Your Brand Features in Google Materials. To the extent applicable, Google may include Your Brand Features in presentations, marketing materials, and customer lists (which includes, without limitation, customer lists posted on Google's websites and screen shots of the Services). Upon Your request, Google will furnish You with a sample of such usage. Without Google's prior approval, You shall not issue a press release, or any public announcement involving Google Brand Features, concerning Your participation in the Service pursuant to this Agreement.

2 Information Rights and Privacy. Google and its wholly owned subsidiaries may retain and use, subject to the terms of its Privacy Policy (located at <http://www.google.com/privacy.html>, or such other URL as Google may provide from time to time), information collected in Your use of the Service. You understand and agree that Google may access, preserve, and disclose Your personal information and the contents of Your account if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to comply with legal process or protect the rights, property and/or safety of Google, its affiliates or the public. Personal information collected by Google may be stored and processed in the United States or any other country in which Google or its agents maintain facilities. By using the Service, you consent to any such transfer of information outside of your country.

3 Warranties and Disclaimer.

4.1 Google Disclaimer of Warranties. GOOGLE MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICE AND BRAND FEATURES. THE SERVICE AND BRAND FEATURES ARE DISTRIBUTED AND PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS. GOOGLE DOES NOT WARRANT THAT THE GOOGLE SERVICE AND BRAND FEATURES WILL MEET YOUR REQUIREMENTS OR THAT PERFORMANCE OF THE SERVICE WILL BE UNINTERRUPTED OR

ERROR-FREE INCLUDING ANY ERRORS OR OMISSIONS IN THE SEARCH RESULTS OBTAINED THROUGH USE OF THE SERVICE. GOOGLE MAKES NO WARRANTY THAT CUSTOM SEARCH ENGINE WILL INCLUDE ALL DOMAINS SPECIFIED BY YOU. UNDER NO CIRCUMSTANCES SHALL GOOGLE BE LIABLE TO YOU FOR ANY AMOUNT EXCEEDING ONE THOUSAND DOLLARS (\$1000.00).

1 **Your Warranties.** You warrant that: (1) all information provided by You to Google in connection with the Service is true and accurate; (2) You have full power and authority to enter into the Terms of Use; (3) Your Brand Features, Content (defined as all editorial, text, graphic, audiovisual, and other content that is served to End Users of the Site and that is not provided by Google), or Site do not (a) infringe any Intellectual Property Rights of any third party, (b) constitute defamation, libel or obscenity, (c) result in any consumer fraud, product liability, breach of contract to which You are a party or cause injury to any third party, (d) promote violence or contain hate speech, (e) violate any applicable law, statute, ordinance, or regulations, or (f) contain adult content or promote illegal activities, gambling, or the sale of tobacco or alcohol to persons under twenty-one (21) years of age; (4) You will seek all necessary governmental approvals required to effectuate the Terms of Use; and (5) You shall perform all of Your obligations under the Terms of Use in accordance with applicable laws.

2 **Indemnification.** You will indemnify, defend, and hold Google harmless from any third party lawsuit or proceeding brought against Google based upon a claim that would constitute a breach of any warranty, representation or covenant made by You under the Terms of Use, including but not limited to any third party lawsuit or proceeding brought against Google based upon a claim that the Content, Site, or Your Brand Features infringe any copyright, trade secret or trademark of the third party. Your indemnification will include (1) all attorneys' fees and costs associated with the defense of such a claim, (2) all damages and costs finally awarded, and (3) the full cost of any settlement entered into by You. Google shall (1) notify You of any such claim, (2) provide You with reasonable information, assistance and cooperation in defending the lawsuit or proceeding (to the extent requested by You), and (3) give You full control and sole authority over the defense and settlement of such claim. You will not enter into any settlement or compromise of any such claim without Google's prior consent, which shall not be unreasonably withheld.

3 **Limitation of Liability.** GOOGLE SHALL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THE TERMS OF USE OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY THEORY OF LIABILITY INCLUDING BUT NOT LIMITED TO CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR OTHER DAMAGES ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE GOOGLE SERVICE, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUES, LOSS OF PROFITS, LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICE OR TECHNOLOGY. THIS LIMITATION SHALL APPLY EVEN IF GOOGLE WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE

POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN. THE SERVICE ARE PROVIDED WITHOUT CHARGE AND THE PARTIES AGREE THAT THE FOREGOING LIMITATIONS REPRESENT A REASONABLE ALLOCATION OF RISK UNDER THE TERMS OF USE. SOME STATES DO NOT ALLOW EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

7. Term and Termination.

7.1 **Term.** The term of the Terms of Use (the "Term") shall commence on the date upon which You add Code to Your Site and shall continue in force thereafter, unless terminated as provided herein.

7.2 **Termination.** Google may change, suspend or discontinue all or any aspect of the Service, including their availability, at any time, and may terminate Your use of the Service at any time. In addition, either

party may terminate the Terms of Use at any time, for any reason, or for no reason including, but not limited to, if You engage in any action that reflects poorly on Google or otherwise disparages or devalues the Google Brand Features or Google's reputation or goodwill. If You desire to terminate the Terms of Use, You must immediately stop your use of the Service.

7.3 Rejection of Application. Google shall have the right, in its sole discretion, to reject any request to use the Service at any time and for any reason, and such rejection shall render null and void the Terms of Use between You and Google. Google shall not be liable to You for damages of any sort resulting from its decision to reject such a request.

7.4 Effect of Termination. Upon the termination of the Terms of Use for any reason (i) all license rights granted herein shall terminate and (ii) You shall immediately stop your use of the Service and delete any and all Google Brand Features from the Site.

7.5 Survival. In the event of any termination or expiration of the Terms of Use for any reason, Sections 2.1, 4, 5, 6, 7.4, 7.5, 7.6, and 8 shall survive termination. Neither party shall be liable to the other party for damages of any sort resulting solely from terminating the Terms of Use in accordance with its terms.

1 Remedies. You acknowledge that Your breach of service/license restrictions contained herein may cause irreparable harm to Google, the extent of which would be difficult to ascertain. Accordingly, You agree that, in addition to any other remedies to which Google may be legally entitled, Google shall have the right to seek immediate injunctive relief in the event of a breach of such sections by You or any of Your officers, employees, consultants or other agents.

2 Miscellaneous. Each party will comply with all laws, rules and regulations, if any, applicable to it in connection with the performance of its obligations under the Agreement. All notices will be in English and in

writing and (a) if sent to You: to the address You may have previously indicated and (b) if sent to Google to: Google Inc., Attn: Legal Department, 1600 Amphitheatre Parkway, Mountain View, CA 94043. Notice will be deemed given (i) upon receipt when delivered personally,

☐ (ii) upon written verification of receipt from overnight courier, (iii) upon verification of receipt of registered or certified mail or (iv) upon verification of receipt via facsimile, provided that such notice is also sent simultaneously via first class mail. You will not assign or otherwise transfer Your rights or delegate Your obligations under the Terms of Use, in whole or in part, without the prior written consent of Google; and any attempt to do so will be null and void. Any assignment or other transfer of rights or delegation by You shall not operate to relieve You of Your responsibilities under this Terms of Use. You will require Your assignees, transferees, or delegates to agree, in writing, to the terms and conditions of this Terms of Use. This Terms of Use and any claim or dispute of whatever nature arising out of or relating to this Terms of Use will be governed by and construed in accordance with the laws of the State of California and applicable federal U.S laws, without giving effect to any choice of law principles that would require the application of the laws of a different state. Each party agrees to submit to the personal and exclusive jurisdiction of the courts located in Santa Clara County, California. The parties specifically exclude from application to the Terms of Use the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. The Terms of Use supersedes any other prior or collateral agreements, whether oral or written, with respect to the subject matter hereof. Any amendments or modifications to the Terms of Use must (i) be in writing;

☐ (ii) refer to the Terms of Use; and (iii) be executed by an authorized representative of each party. The failure to require performance of any provision will not affect a party's right to require performance at any time thereafter; nor will waiver of a breach of any provision constitute a waiver of the provision itself. If any provision is adjudged by a court of competent jurisdiction to be unenforceable, invalid or otherwise contrary to law, such provision will be interpreted so as to best accomplish its intended objectives and the remaining provisions will remain in full force and effect. The parties hereto are and will remain independent contractors and nothing herein will be deemed to create any agency, partnership, or joint venture relationship between the parties. Neither party will be deemed to be an employee or legal representative of the other nor will either party have any right or authority to create any obligation on

behalf of the other party. Neither party will be liable for failing or delaying performance of its obligations (except for the payment of money) resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures, and Internet disturbances. The Terms of Use is not intended to benefit, nor will it be deemed to give rise to, any rights in any third party. The Terms of Use will be binding on and inure to the benefit of each of the parties and their respective successors and assigns. THE TERMS OF USE CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF. THE TERMS OF USE SUPERSEDE, AND THE TERMS OF THE TERMS OF USE GOVERN, ANY OTHER PRIOR OR COLLATERAL AGREEMENTS WITH RESPECT TO THE SUBJECT MATTER HEREOF.

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